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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/532,590	05/11/2006	Manfred Guggolz	095309.56195US	4808
23911 7590 12/16/2008 CROWELL & MORING LLP INTELLECTUAL PROPERTY GROUP P.O. BOX 14300 WASHINGTON, DC 20044-4300			EXAMINER LE, DAVID D	
			ART UNIT 3655	PAPER NUMBER
			MAIL DATE 12/16/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/532,590

Applicant(s)

GUGGOLZ ET AL.

Examiner

David D. Le

Art Unit

3655

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 September 2008.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10-20 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 10-20 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 25 April 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-8508)
4) ☐ Interview Summary (PTO-413)
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____
Paper No(s)/Mail Date _____

DETAILED ACTION

1. This is the second Office action on the merits of Application No. 10/532,590, filed on 11 May 2006. Claims 10-20 are pending.

Documents

2. The following documents have been received and filed as part of the patent application:
 - Copy of Foreign Priority Document, received on 04/25/05
 - Information Disclosure Statement, received on 04/25/05
 - Declaration and Power of Attorney, received on 05/11/06
 - Substitute Specification, received on 02/09/06
 - Information Disclosure Statement, received on 02/12/08

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. **Claims 13, 14 and 16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

Claims 13, 14 and 16:

Claims 13, 14 and 16 recite the limitation "carrying out *at least one of* the selection and the test..." This limitation appears to be conflicting with claim 11, which

claims 13, 14 and 16 are directly or indirectly dependent upon, because claim 11 performs both, the selection and the test, as opposed to claims 13, 14 and 16, which only perform at least one of the selection and the test.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. **Claims 10-20 are rejected under 35 U.S.C. 102(b) as being anticipated by WO**

02/060715 A1 (hereinafter referred to as WO'715).

Claims 10-20:

WO'715 (Figs. 1-4B; paragraphs [0013] – [0036]) discloses a control system for selecting automated transmission system shift strategy comprising:

- A drive machine (i.e., Fig. 1, element 18);
- A transmission (i.e., Fig. 1, element 12);
- A clutch (i.e., Fig. 1, element 20);
- An input brake (i.e., Fig. 1, element 29);
- A control device (i.e. Fig. 1, element 46);
- Wherein the control device makes a selection as a function of selection rules and vehicle parameters and variables as to whether the clutch remains engaged or

disengaged when a gear change takes place from an original gear to an intended gear in the transmission (i.e., paragraphs [0029] – [0036]);

- Wherein, when the gear change is carried out with the clutch engaged, the control device operatively synchronizes a rotation speed of a transmission input shaft to an intended rotation speed of the intended gear by controlling the drive machine (i.e., paragraphs [0029] – [0036]);
- Wherein the control device carries out the gear change exclusively with the clutch disengaged after an initial starting-up of the drive train (i.e., paragraphs [0029] – [0036]);
- Wherein the control device carries out a test to determine whether the gear change can be carried out with the clutch engaged and makes the selection based on a result of the test (i.e., paragraphs [0029] – [0036]);
- Wherein the control device carries out the test as a function of vehicle parameters and variables (i.e., paragraphs [0029] – [0036]);
- wherein the vehicle parameters vary (i.e., paragraphs [0029] – [0036]);
- Wherein the control device operatively synchronizes the rotation speed of the input shaft to the intended rotation speed of the intended gear by using the input brake (i.e., paragraphs [0029] – [0036]);
- Wherein at the start of a downshift gear change, the clutch remains engaged, and the control device operatively drives an actuating element to deselect the original gear, determines a time since the driving of the actuating elements, monitors

whether time exceeds a threshold without the original gear having been deselected, disengaged the clutch (i.e., paragraphs [0029] – [0036]); and

- Wherein the stated threshold is dependent on at least one of vehicle parameters, vehicle variables, and variables which describe an environment of the motor vehicle (i.e., paragraphs [0029] – [0036]).

Response to Arguments

7. Applicant's arguments with respect to claims 10-20 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David D. Le whose telephone number is 571-272-7092. The examiner can normally be reached on Mon-Fri (0900-1730).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles A. Marmor can be reached on 571-272-7095. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/David D. Le/
Primary Examiner, Art Unit 3655
12/14/2008

ddl